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Sunset Review
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the
Antidumping Duty Order on Brass Sheet and Strip from Germany;
Preliminary Results

Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order covering brass sheet and strip from Germany. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

The Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the Federal Register with respect to imports of brass sheet and strip from Germany at the following rates.¹

Germany

Wieland-Werke AG (“Wieland”)	3.81 Amended
Langenberg	16.18 Amended
All Others	7.30 Amended

The Department later published in the Federal Register the antidumping duty order on brass sheet and strip from Germany.²

Since the issuance of the antidumping duty order, the Department conducted eight administrative reviews with respect to brass sheet and strip from Germany.³ There have been no changed-circumstances determinations concerning the brass sheet and strip antidumping order. In the eleventh administrative review, the Department determined, that antidumping duties were being absorbed on all of Wieland’s U.S. sales of the subject merchandise through its affiliated importer, based in adverse facts available.⁴ The Department determined that C.D.A. 667-series manganese brass was not a minor alteration of C.D.A. 200-series brass sheet and strip and, thus, Wieland was not circumventing the antidumping duty order on brass sheet and strip from

¹ See Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Federal Republic of Germany, 52 FR 822 (January 9, 1987) amended at 52 FR 35750 (September 23, 1987).

² See Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany, 52 FR 6997 (March 6, 1987) amended at 52 FR 35750 (September 23, 1987).

³ See Brass Sheet and Strip from the Federal Republic of Germany; Final Results of the Antidumping Duty Administrative Review, 56 FR 60087 (November 27, 1991) amended at 57 FR 276 (January 3, 1992) and amended again at 62 FR 38256 (July 17, 1997); Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Reviews, 60 FR 38542 (July 27, 1995) amended at 61 FR 18720 (April 29, 1996); Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Review, 60 FR 38031 (July 25, 1995); Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 61 FR 49727 (September 23, 1996); Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Review, 63 FR 42823 (August 11, 1998); Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Review, 64 FR 43342 (August 10, 1999).

⁴ See Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review, 64 FR 43342 (August 10, 1999).

Germany.⁵ The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Germany.

The Department conducted the first sunset review on imports of brass sheet and strip from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.⁶ The International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁷ Thus, the Department published the notice of continuation of this antidumping duty order.⁸

On April 1, 2005, the Department published the notice of initiation of the second sunset review of the antidumping duty order on brass sheet and strip from Germany pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 70 FR 16800 (April 1, 2005). The Department received the Notice of Intent to Participate from Heyco Metals, Inc., Olin Corporation - Brass Group, Outokumpu American Brass, PMX Industries, Inc., Revere Copper Products, Inc., Scott Brass, International Association of Machinist and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United Steelworkers of America AFL-CIO/CLC (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations (“Sunset Regulations”). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as manufacturers of a domestic-like product in the United States, and unions whose workers are engaged in the production of a domestic-like product in the United States.

We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received one response from the respondent interested parties in Germany (Wieland, Prymetall GmbH & Co. KG (“Prymetall”), and Schwermetall Halbzeugwerk GmbH & Co. KG (“Schwermetall”) (collectively “the respondent interested parties”). We initially found this response to be inadequate because respondent interested parties appeared to account for less than 50 percent of the exports of subject merchandise from Germany to the United States during the sunset review period. See Memorandum to Ronald Lorentzen, Acting Director, Office of Policy, from Kelly Parkhill entitled, “Adequacy Determination: Sunset Review of the Antidumping Duty Order on Brass

⁵ See Brass Sheet and Strip from Germany; Negative Final Determination of Circumvention of Antidumping Duty Order, 56 FR 65884 (December 19, 1991).

⁶ See Final Results of Expedited Sunset Review: Brass Sheet and Strip from Germany, 64 FR 49767 (September 14, 1999).

⁷ See ITC Sunset Determination, 65 FR 20832 (April 18, 2000).

⁸ See Continuation of Orders, 65 FR 25304 (May 1, 2000).

Sheet and Strip from Germany,”(May 24, 2005). As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department began an expedited (120-day) sunset review of this order. However, on June 20, 2005, respondent interested parties submitted comments on the Department’s adequacy determination. Domestic interested parties submitted comments on June 10, 2005, and rebuttal comments on June 27, 2005. Based on further research, the Department decided to conduct a full review. See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from Susan H. Kuhbach entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Brass Sheet and Strip from Germany,” (August 12, 2005).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would be likely to lead to a continuation or recurrence of dumping by the German manufacturers, producers, and exporters of the subject merchandise due to continued dumping. See Substantive Response of domestic interested parties (May 2, 2005) at 34-35.

The domestic interested parties state that the volume of imports subject to this order declined significantly after the imposition of the order, and has not recovered. Antidumping duty margins rose for Wieland from 3.81 percent to 14.65 percent and then declined significantly in subsequent reviews to *de minimis*, but the Department denied revocation of Wieland because the Department could not conclude in light of very small volumes of imports from Wieland that there was no likelihood of a resumption of sales at less than fair value. After this, Wieland’s margins increased to an AFA rate of 16.18 percent. Thus, the domestic interested parties conclude that the substantial dumping margins and significant decline in the volume of imports following the issuance of the antidumping duty order demonstrate that revocation of the order will certainly lead to a continuation of dumping. See id at 42-43.

The respondent interested parties “do not believe there is a basis under current Department policy

for determining that dumping would not likely recur absent the order.” See Substantive Response of respondent interested parties (May 2, 2005) at 4.

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department’s determinations of likelihood will be made on an order-wide basis.⁹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁰ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order.

Using statistics provided by the domestic interested parties in their May 2, 2005, “Response to Notice of Initiation” at Enclosure 2, the Department finds that imports of German brass sheet and strip have fluctuated from 5,272,277 to 2,647,654 pounds since the completion of the first sunset review, but always remained below pre-order levels. Given that dumping has continued at levels above *de minimis*, and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

In their May 2, 2005, substantive response, the domestic interested parties request that the Department report to the ITC the margins that were determined in the most recent administrative reviews. See pages 48-49. In their May 13, 2005, rebuttal comments at page 4, the domestic interested parties recommend the following dumping margins:

Wieland-Werke AG	16.18
All Others	7.30

Respondent interested parties request that the Department report to the ITC the margins that were determined in the final sales at less than fair value determination in the original investigation in

⁹ See SAA at 879 and House Report at 56.

¹⁰ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

accordance with the SAA. See their May 2, 2005, substantive response at page 4. The respondent interested parties recommend the following dumping margins:

Wieland-Werke AG	3.81
All Others	7.30

With respect to brass sheet and strip from Germany, the domestic interested parties request that the Department report to the ITC the rate of 16.18 percent, as determined in the tenth and eleventh administrative reviews as an adverse facts available rate for Wieland despite the rate of 3.81 percent reported in the investigation. The domestic interested parties request the 7.30 percent all others rate for Prymetall and Schwermetall.

The domestic interested parties argue that the AFA rate of 16.18 for Wieland determined in the tenth and eleventh reviews more accurately reflects the behavior of this company in the absence of the order. The domestic interested parties argue that 16.18 percent is the rate assigned to Langenberg in the original investigation, and that Langenberg is now a part of Wieland. Further, they argue that the Department may report a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order, even if the increase was a result of the application of best information available or facts available. Finally, they argue that import volumes for all of the respondents have declined significantly since the investigation, and that Wieland was only able to reduce its dumping margin in earlier reviews by drastically reducing its exports to the United States.

Respondent interested parties argue that normally the Department will provide to the ITC the margin that was determined in the final determination in the original investigation. They argue that this is consistent with Congressional intent at H.R. Rep. No. 103-826, pt. 1, at 64 (1994).

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

We agree with respondent interested parties that it is the Department's practice to provide to the ITC the margin that was determined in the final determination in the original investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place. We do not agree with domestic interested parties' arguments for the use of the AFA rate for Wieland. First, the fact that Wieland

purchased Langenberg some time after the investigation does not dictate that Wieland receive the AFA rate assigned to Langenberg in the investigation.

Second, the domestic interested parties' argument that the Department may report a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order, even if the increase was a result of the application of best information available or facts available, is unpersuasive. According to Department practice, a more recent rate may be appropriate where a company chooses to increase dumping in order to increase or maintain market share, or because of a finding of duty absorption. However, without company-specific information or argument related to increasing exports corresponding to increased dumping, we have no basis to determine that a more recent rate is more probative of the margin likely to prevail. Further, as already stated, all parties agree that the use of the duty absorption rate is not appropriate based on the Federal Circuit's holding in FAG Italia S.p.A. v. United States, 291 F.3d 806, 819 (2002).

Third, we have found in the past that Wieland should not be excluded from the order despite the calculation of *de minimis* margins because Wieland's exports declined significantly to a low of one small shipment in the eighth administrative review. See Brass Sheet and Strip From Germany: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 61 FR 49727, 49730 (September 23, 1996). While we acknowledge a decline in shipments since the issuance of the order, this does not in our view support adoption of the more recent AFA rate in this sunset review instead of the investigation rate.

In the first sunset review, the Department found that the investigation rate was the most appropriate for Wieland. See 64 FR 49767, 49770. In this second sunset review the Department again finds that it is appropriate to provide the ITC with the rate from the investigation for Wieland because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Thus, the Department intends to report to the ITC the margins listed below.

Preliminary Results of Review

We determine that revocation of the antidumping duty order on brass sheet and strip from Germany would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Wieland-Werke AG	3.81
All Others	7.30

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date